

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN W. LYLE,

Plaintiff,

v.

SAN MATEO COUNTY DISTRICT
ATTORNEY OFFICE, et al.,

Defendants.

Case No. [17-cv-00426-JSC](#)

**ORDER GRANTING LEAVE TO
AMEND; RESOLVING PENDING
MOTIONS**

Re: Dkt. Nos. 21, 22, 26

Plaintiff, an inmate at the San Mateo County Jail, filed this pro se civil rights action under 42 U.S.C. § 1983. The complaint was dismissed with leave to amend, and Plaintiff filed a First Amended Complaint. (ECF Nos. 18, 23.) Thereafter, he filed papers that appear to be intended to supplement the amended complaint. (ECF No. 25.) He has since filed a motion to dismiss his complaint in order to complete exhausting his claims. (ECF No. 26.) Plaintiff certainly has the right to voluntarily dismiss his case under Rule 41(a) of the Federal Rules of Civil Procedure, and such a dismissal would be without prejudice, meaning that he would be able to file his claims again at a later date after his claims are exhausted and he is ready to submit them. Plaintiff asks, somewhat contradictorily, to dismiss without prejudice and with leave to amend. The Court presumes that Plaintiff means that he does not want to dismiss this action, but rather that he wants to further amend his complaint. Two letters received from Plaintiff following his motion to dismiss further suggest that he would like to continue prosecuting this case and to amend his complaint further. (ECF Nos. 27, 28.) Good cause appearing, Plaintiff's motion to dismiss the First Amended Complaint with leave to amend is GRANTED, as follows:

1. Within **twenty eight (28) days from the date this order is filed**, Plaintiff shall file a Second Amended Complaint that includes the caption and civil case number used in this Order

(No. C 17-0426 JSC (PR)) and the words “COURT-ORDERED SECOND AMENDED COMPLAINT” on the first page. Because an amended complaint completely replaces the prior versions of the complaint, *see Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992), Plaintiff may not incorporate material from the original complaint or First Amended Complaint by reference. He must include in his Second Amended Complaint all the claims he wishes to pursue. Moreover, Plaintiff may not file his Second Amended Complaint in pieces or supplement it after the fact. Rather, Plaintiff must include all the claims, allegations, and defendants he wishes to include in this case in his Second Amended Complaint. Lastly, the Second Amended Complaint must comply with the joinder rules discussed in the Order dismissing the complaint with leave to amend. (ECF No. 18.) If Plaintiff fails to amend within the designated time and in accordance with this order, this case will proceed based upon the First Amended Complaint.

2. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the Court informed of any change of address by filing a separate paper with the clerk headed “Notice of Change of Address.” He also must comply with the Court's orders in a timely fashion, although he may request an extension of time provided it is accompanied by a showing of good cause and it is filed on or before the deadline he wants to extend. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

3. Plaintiff's motion for an extension of time (ECF No. 21) is DENIED as unnecessary. His motion to stay the proceedings (ECF No. 22) is DENIED as moot because it pre-dates his motion to amend the complaint.

This Order disposes of Docket Nos. 21, 22, and 26.

IT IS SO ORDERED.

Dated: October 23, 2017


JACQUELINE SCOTT CORLEY
United States Magistrate Judge

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CERTIFICATE OF SERVICE

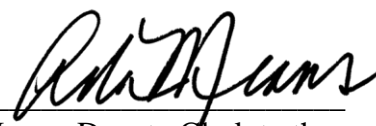
I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on October 23, 2017, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

John W. Lyle ID: 0264100
San Mateo County Jail
300 Bradford Street
Redwood City, CA 94063

Dated: October 23, 2017

Susan Y. Soong
Clerk, United States District Court

By: 
Ada Means, Deputy Clerk to the
Honorable JACQUELINE SCOTT CORLEY